(6)

Central Administrative Tribunal
Principal Bench

OA No.388/2002

New Delhi, this the 12th day of September, 2002

Hon'ble Sh. Govindan S.Tampi, Member (A)

Sh. B.D.Lakhanpal
S/o Sh. Bhagat Ram
working as LSG Sorting Assistant in South Delhi Sorting Office under Airmail Sorting Division New Delhi - 110 021, R/o R,K.Puram, New Delhi, Address for service of notices C/o Shl Sant Lal Advocate, C-21 (B) New Multan Nagar - 110 056.

(By Adv. Sh. Sant Lal) ...Applicant

Vs.

1. The Union of India through the Secretary Ministry of Communications, Deptt. of Posts Dak Bhawan, New Delhi - 110 001.
2. The Chief Postmaster General, Delhi Circle Meghdoot Bhawan, New Delhi - 110 001.
3. The Sr. Supdt., Airmail Sorting Division Chanakyapuri, New Delhi - 110 021.

...Respondents

(By Adv. Sh. R.P.Aggarwal)

O R D E R (ORAL)

By Hon'ble Sh. Govindan S.Tampi, M (A)

Orders dt. 28-1-2000, 4-12-2000 and 28-11-2001 imposing the penalty on the applicant and appellate as well as revisionary orders confirming the above penalty are under challenge in this OA.

2. Heard S/Sh. Sant Lal and R.P.Aggarwal, ld. counsel for the applicant and the respondents respectively.

3. The applicant a Sorting Asstt. in LSG w.e.f. 21-3-99 was proceeded against by Chargesheet dt. 9-7-98 under Rule 16 of CCS (CCA) Rules, 1965 for alleged violation of Rule 7 of CCS (Conduct) Rules, 1964. Applicant's request for supply of relevant documents on 22-7-99 and 31-8-99 were rejected on 25-8-99 and 21-9-99. The applicant's representation dt. 1-10-99 was brushed aside and he was imposed on 28-1-2000 a penalty of reduction from

Rs. 5000/- to Rs. 4750/- for three years, disallowing increments during the period but no further effect thereafter. His appeal dt. 10-3-2000 and his revision application dt. 19-6-2001 were rejected on 4-12-2000 and 28-11-2001 respectively. Hence this OA.

4. The applicant pleads that he has been imposed a major penalty under Rule 11 (ii) (a). This has been done without following the requisite procedure prescribed under Rule 14. This had vitiated the proceedings as brought out in Principal Bench decision dt. 3-2-2000 in OA 339/96, filed by Jaswant Singh, issued in similar circumstances. Besides, the decision has been taken by the DA without permitting the applicant to inspect the documents relied upon by the respondents. The applicant has been penalised on the charges that he had instigated his colleagues to desist from work, exclusively relying upon the report of Head Sorting Asstt, which was not proved. Besides the appellate and revisionary authorities had disposed of the appeal and the revision by totally non-speaking orders and without giving any hearing to the applicant. The above were reiterated by Sh. Sant Lal, ld. counsel.

5. Rebutting the pleas raised by the applicant, the respondents point out that the applicant had been penalised for violation of Rule 7 of the CCS (Conduct) Rules, on the basis of the chargesheet for minor penalty under Rule 16 of the CCS (CCA) Rules. As only a minor penalty was imposed, therewas no necessity of following the enquiry proceedings, aswas being claimed. Orders passed by the disciplinary authority, appellate authority and revisionary authority, were based on facts brought on record and did not call for any interference, plead the respondents through

Sh. R.P.Aggarwal, ld. counsel. According to him, the applicant has no case at all and the decisions cited by him had no relevance whatsoever. OA, therefore, should fail, urged Sh. Aggarwal.

6. On careful consideration of the matter, I am convinced that the applicant has a case. While the applicant has alleged that he had been imposed a major penalty under the garb of a minor penalty and without following the proceedings, the respondents argue that the penalty was only a minor one. I find that the issue in this OA is squarely covered by the decisions of the Tribunal decided on 3-2-2000 in OA 339/96 filed by Jaswant Singh in identical circumstances. Facts of the case make it clear that as in the said OA, here also the chargesheet and imposition of penalty were purported to be under Rule 16 of CCS (CCA) Rules as a minor penalty but what was a major penalty, withholding of increment with cumulative effect. It, therefore, was a major penalty as correctly pointed out in the decision in OA 339/96. Relevant portion of the said judgement is reproduced as below :-

> One of the main issues for consideration in this case is whether the penalty imposed on the applicant is a major or minor penalty as provided in Rule 11 of the Rules. This rule gives the nature of penalties which can be imposed by the disciplinary authorities on a Government servant, namely, minor penalties which includes clause (iii) (a) and under the sub-heading of Major Penalties clause (v). The relevant clauses under Rule 11 are reproduced below :
>
> "Penalties
>
> The following penalties may for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, mamely, :-
>
> Minor Penalties -
>
> (i) to (iii) X X X X
>
> (iii) (a) reduction to a lower stage in the time scale of pay for a period not exceeding 3 years, without cumulative effect and not

adversely affecting his pension.

Major Penalties -

"save as provided for in clause (iii) (a) reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the Govt. servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay."

11. Having regard to the nature of the penalty imposed in this case, relevant portion of which has been reproduced in paragraph 3 above, which includes a direction that the applicant will not earn incremen s of pay during the period of reduction of his pay for the period of two years, although on expiry of that period the reduction will not have the effect of postponing his future increments we are of the view that this does not fall within the provisions of Rule 11 (iii) (a) of the Rules. The clarification issued under sub-rule (iii) (a) by the DOP&T OM dated 28-5-1992 is only to the extent that the penalty under this clause has been carved out of clause (v) specifically and that it does not constitute a major penalty under clause (v). This position is also made clear under clause (v) which begins with the expression, save as provided for in clause (iii) (a). Much emphasis was placed by Sh. K.R.Sachdeva, ld. counsel on the clarification provided under clause (iii) (a) of Rule 11 and that this penalty has been taken out of the major penalty provided in clause (v) as a minor penalty only, Only While that position is not disputed, the facts of this case have to be seen to determine the question whether a major or minor penalty has been imposed on the applicant. In the present case, the applicant's pay has been reduced by 10 stages from Rs. 1240/- to Rs. 975/- in the time scale of Rs. 975-1660 with further directions as mentioned above in para 3. Clause (v) of Rule 11 provides that other than the provisions in clause (iii) (a), reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether

(10)

> on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay is governed under this clause (Emphasis added). In the facts and circumstances of the case, therefore, we are of the view that the penalty imposed on the applican is a major penalty underclause (v) of Rule 11 for which it was necessary to hold a deptt11. inquiry under Rule 14 of the Rules. Admittedly this has not been done by the respondents as their contention is that only a minor penalty has been imposed after following the provisions in Rule 16 of the Rules, thereby depriving him of a reasonable opportunity of hearing."

The facts being similar in this OA, I respectfully agree with the above decision and hold that fulfilment of requirement holding the inquiry could not or should not have been given up, as the respondents have done so. Besides, as pointed out earlier, the appellate authority also should have exercised his independent judgement instead of relying upon the disciplinary authority's parawise comments. This has rendered the appellate order also bad in law. Even otherwise, once the DA's order is held as liable for being set aside, appellate and revisionary authorities' orders have to follow suit. However, as the orders have become bad primarily on procedural and technical grounds, the action of the respondents are not being treated as void.

7. In the above view of the matter, OA succeeds and is accordingly allowed. All the impugned orders dt. 28-1-2000 4-12-2000 and 28-11-2001 are quashed and set aside. The respondents are directed to conduct disciplinary proceedings against the applicant, if so advised, and felt necessary, from the stage of the chargesheet and after conducting an inquiry as is required in the case of the major penalty proceedings. This shall be done within three months from the date of receipt of a copy of this order. No costs.

(Govindan S. Tampi)
Member (A)